

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

IN RE:

DAVE TATE, SR.

NO. 17-11941 JDW

MOTION FOR RELIEF FROM AUTOMATIC STAY

Comes now Capital One Auto Finance, a Division of Capital One, N.A. (hereinafter "Capital One"), by and through its counsel of record, Byrd & Wiser, and files this its Motion for Relief from Automatic Stay, pursuant to Section 362 of the Bankruptcy Code, and in support of same would show unto the Court the following, to-wit:

I

The Debtor filed his Chapter 13 Petition on or about May 26, 2017.

II

That Capital One is the holder of a secured claim as to certain personal property of the Debtor, namely one (1) 2010 Nissan Altima, VIN 1N4AL2AP8AN479040, all as more fully set forth on Exhibit "A" which is attached hereto and incorporated herein by reference.

III

That Capital One is owed the principal sum of \$23,754.91, exclusive of accumulating late charges and reasonable attorney's fees necessitated by the filing of the instant Motion.

IV

Capital One would show unto the Court that pursuant to the Debtor's Chapter 13 Plan, the Debtor proposes to abandon Capital One's collateral.

V

Capital One would furthermore show unto the court that the Debtor has failed and refused to maintain insurance on the subject matter vehicle duly naming Capital One as lien holder and loss payee as required by the parties' Retail Instalment Contract and Security

Agreement.

VI

Adequate cause exists for termination of the Automatic Stay pursuant to Section 362(d) of the Bankruptcy Code as to the Movant, Capital One.

WHEREFORE, premises considered, Capital One would pray that after notice and hearing this Court enter its Order terminating the Automatic Stay of Section 362 of the Bankruptcy Code as to the Movant, Capital One, so as to allow it to pursue its rightful remedies as to its subject matter collateral, and that this Court furthermore enter its Order abandoning the subject matter vehicles as property of the estate, and Capital One furthermore prays that it be awarded its reasonable attorney's fees necessitated by the filing of the instant motion and Capital One prays for such other and further relief as is just and proper in the premises.

Respectfully submitted,

CAPITAL ONE AUTO FINANCE, a
Division of Capital One, N.A.

BY: BYRD & WISER

BY: 
ROBERT ALAN BYRD

CERTIFICATE

I, ROBERT ALAN BYRD, Attorney for Capital One Auto Finance, do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the court registered e-filers of CM/ECF and/or via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Relief from Automatic Stay to the following:

William C. Cunningham, Attorney for Debtor, at wccsinc@gmail.com

Terre Vardaman, Trustee, at vardaman13ecf@gmail.com

Office of the U.S. Trustee, at USTPRegion05.JA.ECF@usdoj.gov

WITH A COPY MAILED TO:

Dave Tate, Sr., Debtor
1659 Turkey Creek Road
Starkville, MS 39759

This the 2d day of August, 2017.



ROBERT ALAN BYRD

Retail Installment Contract: All Not for use in transactions secured by a dwelling.
Bankers' SystemsSM
Madison Kliney Financial Services © 1995, 2010

dealertrack

title management system
Capital One Auto Finance

Search Work Queues Reports Utilities User Setup

Home Help Resources Contact Log out

Perfected

Account

Actions»

VIN/HIN: **1N4AL2AP8AN479040** Status: **Perfected (PT)** Titling State: **MS** Year: **2010**
Account: **3641** Loan: **3641** Loan Suffix: **3641** Branch: **800** Make: **NISS ALTI** Model: **MA**

LOAN

Overview

Primary customer: **TATE, DAVE**
Secondary customer: **TATE, MINNIE**
Home phone: **6623416643**
Address: **1659 TURKEY CREEK
STARKVILLE, MS 39759**
Alert when perfected: ☐ Client ☐ CMS
Originator: **PLA**
App. ID: **9465**
User Defined 3:
Lienholder Status Code:
Business Unit:
Dealer ID/Name: **37039/CARL HOGAN TOYOTA MS**

Recovery type:
Amount Financed: **17384.99**
Financed date: **10/21/2013**
Booked date: **10/21/2013**
Expected payoff date: **10/16/2019**
Payoff date:
Perfected date: **11/29/2013**
State: **MS**
Account subtype: Loan (F)
Expected Contract Type:

Customers

	Order	Order	Name	Type	Home Phone	Business Phone	Address	
Edit	1	▼	TATE, DAVE	PERSON	6623416643	6623416643	1659 TURKEY CREEK STARKVILLE, MS, 39759	Delete
Edit	2	▲	TATE, MINNIE	PERSON	6623416643	6623416643		Delete

Property

VIN/HIN	Make	Model	Year	Damaged?	Insurance Total Loss?	Account Collateral Type
1N4AL2AP8AN479040	NISS ALTI	MA	2010	<input type="checkbox"/>	<input type="checkbox"/>	VEH

Dealer Info

ID: **37039** Type: **DEALER**
Name: **CARL HOGAN TOYOTA MS** Status: **ACTIVE**
Address: **3907 HIGHWAY 45 NORTH
COLUMBUS, MS 39705** Dealership:
Phone: **6622416000** Contact Name: **JOSH FENSTER**
Fax: **6622419601** Contact Phone: **6622416000**
EMail: Note:

Lien Filing

Release

Duplicate Title

Request Date: Action Date:
Status: Last Worked By:

State: Required State Forms:
Reason: Requesting Dept:
Operations Code: Billable: ☐

Follow Up

[Client Activities](#)

Direct Lending Services

Additional Documents


Additional Documents do not exist for this account

Obsolete Docs

Title

Actions»

VIN/HIN: **1N4AL2AP8AN479040** State: **MS** Title Number:
Year: **2010** Make/Builder: **NISS** Model:

Batch Number:  [View Image](#)

Title-Held by CMS
Perfecting

Overview

Owner(s): **TATE DAVE OR MINNIE TATE** Closed Date:
Lienholder: **CAPITAL ONE AUTO FINANCE** Closed Reason:
Match Type: **AUTOMATIC** Document Location:
Match Date: **11/29/2013**
Issuance Date: **11/21/2013**
Imported Date: **11/29/2013**

Owners

Property

Liens

Name	Address	Lienholder ID	Lien Date
CAPITAL ONE AUTO FINANCE			

[Add Second Lien](#)

Title Maint

Notes (Date/Time stamps in this section reflect Pacific Time)

[Add Note](#)

Notes

☒ Show All ☐ Show User Notes Only ☐ Show Activity History Only

Date	User	Context	Activity	Note
11/29/2013 09:21 AM	System	Client Export	Send Upload File	Sent upload file to Lender.
11/29/2013 09:21 AM	System	Client Export	Send Upload File	Sent upload file to Lender.
11/29/2013 09:21 AM	System	Scan Import	Create Title	Received and scanned paper document.
11/29/2013 09:21 AM	System	Scan Import	Perfect Account	Account and Document were automatically matched.
10/22/2013 07:30 AM	System	Client Import	Create Account	Account created via a Client Import file.

Work Items